

## **IC 8-23-7**

### **Chapter 7. Real Property Transactions**

## **IC 8-23-7-1**

### **Application of chapter**

Sec. 1. Except as otherwise provided in this chapter, IC 32-24-1 applies to real property transactions conducted by the department.  
*As added by P.L.18-1990, SEC.216. Amended by P.L.2-2002, SEC.48.*

## **IC 8-23-7-2**

### **Purposes for acquiring real property**

Sec. 2. The department may acquire real property for any purpose necessary to carry out this article, including the following:

- (1) To locate, relocate, construct, reconstruct, repair, or maintain a state highway.
- (2) To widen or straighten a highway.
- (3) To clear and remove obstructions to vision at crossings and curves.
- (4) To construct weigh stations and rest areas.
- (5) To provide scenic easements and other areas necessary to cooperate with the federal government or carry out a federal law.
- (6) To facilitate long-range transportation planning.

*As added by P.L.18-1990, SEC.216.*

## **IC 8-23-7-3**

### **Railroad rights-of-way**

Sec. 3. The department may transfer fee simple title or a lesser interest in property to a railroad for a right-of-way.

*As added by P.L.18-1990, SEC.216.*

## **IC 8-23-7-4**

### **Description of property to be acquired; preparation and filing**

Sec. 4. If:

- (1) the department determines the location of a state highway; and
- (2) the location of the highway requires the department to acquire real property, easements in real property, or rights in real property;

the department may prepare a metes and bounds or other description of the property or rights to be acquired. The description shall be filed in the office of the recorder in the county in which the real property is located.

*As added by P.L.18-1990, SEC.216.*

## **IC 8-23-7-5**

### **Notice to owners; delivery**

Sec. 5. The department shall give written notice to the owners of property described in section 4 of this chapter that the department

intends to acquire the real property or rights for highway purposes. The notice may be served in person or sent by certified mail to the owners of the property at the address shown on the tax records of the county.

*As added by P.L.18-1990, SEC.216.*

#### **IC 8-23-7-6**

##### **Improvement and changes in use of property; restrictions**

Sec. 6. An owner receiving notice under section 5 of this chapter may not erect improvements on the real property described, subdivide the property, or make any changes in the use of the property that would affect its use for highway purposes, unless the owner first notifies the department in writing of the intended use.

*As added by P.L.18-1990, SEC.216.*

#### **IC 8-23-7-7**

##### **Improvement and changes in use of property; time limit for state action**

Sec. 7. Whenever the department receives notice under section 6 of this chapter, the department has ninety (90) days to purchase the real property affected or commence condemnation proceedings. If at the end of ninety (90) days the department has not entered into a contract for the purchase of the real property or commenced condemnation proceedings, the owner may proceed with the improvement, subdivision, or use if not otherwise prohibited by law.

*As added by P.L.18-1990, SEC.216.*

#### **IC 8-23-7-8**

##### **Variances and building permits; notice to department; hearing**

Sec. 8. If the property described in section 4 of this chapter lies within a political subdivision that has an ordinance regulating property use or requiring a building permit, the owner of the property shall give written notice to the department of an application or petition for a variance or building permit. The owner shall give notice by sending a copy of the petition or application to the department by certified mail not later than ten (10) days before a hearing is held by local authorities on the petition or application. The department may remonstrate and be heard at a hearing concerning the property by an attorney or representative.

*As added by P.L.18-1990, SEC.216.*

#### **IC 8-23-7-9**

##### **Improvement and changes in use of property; loss of notice rights**

Sec. 9. If the department has not acquired or commenced condemnation proceedings to acquire the real property, rights, or easements described in section 4 of this chapter within three (3) years after filing the description with the county recorder, the department loses the right to receive notice of improvements, subdivisions, or changes on the property that the department acquired by filing a description under section 4 of this chapter.

*As added by P.L.18-1990, SEC.216.*

#### **IC 8-23-7-10**

##### **Publication of information concerning purchased property**

Sec. 10. Whenever the department purchases real property by agreement with the owner of the real property as to purchase price, the department shall, in accordance with IC 5-3-1-2(i), publish a list of the following:

- (1) The owners from whom the property was purchased.
- (2) The number of acres in each property purchased.
- (3) The purchase price of each property.

*As added by P.L.18-1990, SEC.216. Amended by P.L.64-1995, SEC.9.*

#### **IC 8-23-7-11**

##### **Vouchers for payment; attaching grant or deed copies**

Sec. 11. A copy of a grant or deed purchased by the department shall be attached to each voucher submitted for payment under this chapter. The auditor of state may not draw and pay the voucher unless the copy is attached.

*As added by P.L.18-1990, SEC.216.*

#### **IC 8-23-7-12**

##### **Vouchers for payment; certification; payment**

Sec. 12. If condemnation proceedings have been instituted concerning real property, the department shall certify to the auditor of state that the voucher submitted is for escrow and is to be paid to the clerk of the circuit court. The voucher shall be in the amount determined and filed with the clerk of the circuit court. The payment shall be for the use and benefit of the owner of the property sought to be purchased.

*As added by P.L.18-1990, SEC.216.*

#### **IC 8-23-7-13**

##### **Sale of surplus property**

Sec. 13. If the department determines that real property owned in fee simple by the department will not be needed for a purpose described in section 2 of this chapter, the commissioner may issue an order describing the surplus property and offering the surplus property for sale at or above its fair market value as determined by appraisers of the department. The department may combine or divide parcels of surplus property to facilitate the sale of the property.

*As added by P.L.18-1990, SEC.216.*

#### **IC 8-23-7-14**

##### **Sale of surplus property separated from abutting parcel; offer to abutting property owner**

Sec. 14. If a property found to be surplus under section 13 of this chapter abuts a parcel of land from which the surplus property was separated and acquired by the department, the surplus property must

first be offered for sale to the owner of the abutting property. An offer under this section shall be made by certified mail to the last known address of the owner. If the owner accepts an offer under this section, the surplus property shall be conveyed to the owner by quitclaim deed upon payment to the department of not less than the fair market value of the property as determined by the appraisers of the department.

*As added by P.L.18-1990, SEC.216.*

#### **IC 8-23-7-15**

##### **Sale of surplus property separated from abutting parcel; procedure when abutting property owner fails to accept offer**

Sec. 15. (a) If an owner offered surplus property under section 14 of this chapter fails to accept the offer within thirty (30) days, the department may furnish a certified copy of:

- (1) the order issued under section 13 of this chapter; and
- (2) the appraised value of the surplus property;

to the department of administration.

(b) The surplus property may be sold in the same manner as other real property belonging to the state is sold at no less than its appraised value. The proceeds of the sale shall be credited to the department. A sale under this section is subject to the approval of the governor.

*As added by P.L.18-1990, SEC.216.*

#### **IC 8-23-7-16**

##### **Sale of surplus property valued at \$4,000 or less**

Sec. 16. If the appraised value of real property determined to be surplus under section 13 of this chapter does not exceed four thousand dollars (\$4,000), the department may sell the surplus property without advertising or competitive bids for not less than the full appraised value of the surplus property upon approval by the commissioner and the governor.

*As added by P.L.18-1990, SEC.216.*

#### **IC 8-23-7-17**

##### **Exchange of lands, rights, and easements; criteria**

Sec. 17. Whenever the department determines that because of:

- (1) a change in location of a state highway; or
- (2) any other reason;

a parcel of real property owned by the department, or in which the department has rights or an easement, will not be needed, the department may exchange the parcel of property, the rights in the property, or easement in the property for a parcel of property, rights in a property, or an easement in a property, which the department determines is needed.

*As added by P.L.18-1990, SEC.216.*

#### **IC 8-23-7-18**

##### **Exchange of lands, rights, and easements; valuation; payments for**

**differences in value**

Sec. 18. Before making an exchange under section 17 of this chapter, both parcels of real property shall be appraised. Any difference in value between the two parcels of property shall be paid or received by the department. A sum received under this section shall be deposited with the treasurer of state and credited to the state highway construction fund.

*As added by P.L.18-1990, SEC.216.*

**IC 8-23-7-19****Exchange of lands, rights, and easements; improvements**

Sec. 19. (a) If an exchange under section 17 of this chapter includes improvements to be constructed on either parcel of real property, the department shall enter into an agreement with the owner of the parcel of property that the department will receive. An agreement under this section must include the following:

(1) The appraisal required under section 18 of this chapter must include the value of improvements constructed or to be constructed on the property.

(2) The construction contract for improvements under this section must be guaranteed by a construction or performance bond issued by a surety company approved by the department.

(3) The plans and specifications for improvements under this section must be certified by a licensed architect or engineer.

(b) The department must approve in writing the construction contract, bond, plans, and specifications for the improvements before entering into an exchange agreement under this section.

*As added by P.L.18-1990, SEC.216.*

**IC 8-23-7-20****Exchange of lands, rights, and easements; attaching construction contracts, bonds, or plans to exchange agreements**

Sec. 20. The construction contract, bond, plans, and specifications required under section 19 of this chapter shall be attached to the exchange agreement for the parcels of property and incorporated by reference into the exchange agreement.

*As added by P.L.18-1990, SEC.216.*

**IC 8-23-7-21****Exchange of lands, rights, and easements; improvement completion requirement**

Sec. 21. An exchange agreement under section 19 of this chapter is not completed until the improvements specified in the agreement have been constructed in accordance with the plans and specifications approved by the department. The department may not pay or receive any difference in value between the real properties exchanged until the improvements are completed and approved.

*As added by P.L.18-1990, SEC.216.*

**IC 8-23-7-22**

**Change of state highway to tollway**

Sec. 22. The department may, after issuing an order and receiving the governor's approval, determine that a state highway should become a tollway. After the order becomes effective, the department shall maintain and operate the tollway and levy and collect tolls as provided in IC 8-15-3. Before issuing an order under this section, the department shall submit to the governor a plan to bring the tollway to the current design standards of the department for new state highways within a specified period. The specified period may not exceed five (5) years.

*As added by P.L.18-1990, SEC.216.*

**IC 8-23-7-23****Change of state highway to toll road**

Sec. 23. (a) The department may, after issuing an order and receiving the governor's approval, determine that a state highway should become a toll road. An order under this section does not become effective unless the authority adopts a resolution to accept the designated state highway, or part of the highway, as a toll road project under the conditions contained in the order. An order issued by the department under this section must set forth the conditions upon which the transfer of the state highway, or part of the highway, to the authority must occur, including the following:

- (1) The consideration, if any, to be paid by the authority to the department.
- (2) A requirement that the authority enter into a contract or lease with the department with respect to the toll road project under IC 8-9.5-8-7 or IC 8-9.5-8-8.

(b) To complete a transfer under this section, the department must, with the governor's approval, execute a certificate describing the real and personal property constituting or to be transferred with the state highway that is to become a toll road project. Upon delivery of the certificate to the authority, the real and personal property described in the certificate is under the jurisdiction and control of the authority.

*As added by P.L.18-1990, SEC.216.*

**IC 8-23-7-24****Designated parts of state highway allowed to be either tollway or toll road**

Sec. 24. A designated part of a state highway may become a tollway under the jurisdiction of the department under section 22 of this chapter and another designated part of the same state highway may become a toll road project under the jurisdiction of the authority under section 23 of this chapter. If a tollway and a toll road are contiguous parts of the same state highway, the contract or lease entered into under section 23 of this chapter may provide for coordination in the operation and maintenance of the tollway and the toll road project, including joint toll collection facilities and agreement on an equitable division of tolls.

*As added by P.L.18-1990, SEC.216.*

#### **IC 8-23-7-25**

##### **Change of state highways to tollways and toll roads; effectiveness of orders**

Sec. 25. An order issued under section 22 or 23 of this chapter does not become effective until:

- (1) all conditions in the order are satisfied; and
- (2) all conditions in an agreement relating to a state highway that is the subject of an order under section 22 or 23 of this chapter entered into by the Secretary, acting by and through the federal highway administrator, and the state, acting by and through the department or the authority, are satisfied or waived.

*As added by P.L.18-1990, SEC.216.*

#### **IC 8-23-7-26**

##### **Surveys and investigations; right of entry**

Sec. 26. An authorized employee or representative of the department engaged in a survey or investigation authorized by the commissioner or the commissioner's designee may enter upon, over, or under any land or property within Indiana to conduct the survey or investigation by manual or mechanical means, which include the following:

- (1) Inspecting.
- (2) Measuring.
- (3) Leveling.
- (4) Boring.
- (5) Trenching.
- (6) Sample-taking.
- (7) Archeological digging.
- (8) Investigating soil and foundation.
- (9) Transporting equipment.
- (10) Any other work necessary to carry out the survey or investigation.

*As added by P.L.18-1990, SEC.216.*

#### **IC 8-23-7-27**

##### **Surveys and investigations; notification of occupants**

Sec. 27. Before an authorized employee or representative of the department enters upon, over, or under any land or water under section 26 of this chapter, the occupant of the land or water shall be notified in writing by first class United States mail of the entry not later than five (5) days before the date of entry. The employee or representative of the department shall present written identification or authorization to the occupant of the land or water before entering the land or water.

*As added by P.L.18-1990, SEC.216.*

#### **IC 8-23-7-28**

##### **Surveys and investigations; compensation for damages**

Sec. 28. If during an entry under section 26 of this chapter damage occurs to the land or water as a result of the entry or work performed during the entry, the department shall compensate the aggrieved party. If the aggrieved party is not satisfied with the compensation determined by the department, the amount of damages shall be assessed by the county agricultural extension educator of the county in which the land or water is located and two (2) disinterested residents of the county, one (1) appointed by the aggrieved party and one (1) appointed by the department. A written report of the assessment of damages shall be mailed to the aggrieved party and the department by first class United States mail. If either the department or the aggrieved party is not satisfied with the assessment of damages, either or both may file a petition, not later than fifteen (15) days after receiving the report, in the circuit or superior court of the county in which the land or water is located.

*As added by P.L.18-1990, SEC.216. Amended by P.L.40-1993, SEC.3.*

#### **IC 8-23-7-29**

##### **Priority of actions**

Sec. 29. Court proceedings to acquire real property, rights, or easements under this chapter take precedence over all cases not involving the public interest in all courts.

*As added by P.L.18-1990, SEC.216.*

#### **IC 8-23-7-30**

##### **Municipal acquisition of rights-of-way**

Sec. 30. The authority given the department under this chapter to acquire lands by purchase or by the exercise of the right of eminent domain may not be construed to prohibit a municipality from:

- (1) acquiring at its own expense, either by grant, purchase, or condemnation, the necessary right-of-way required by the department for the maintenance, construction, or improvement of a street of the municipality as a part of a highway under the control of the department; or
- (2) entering into an agreement to pay all or any part of the costs of the necessary right-of-way.

*As added by P.L.18-1990, SEC.216.*

#### **IC 8-23-7-31**

##### **Acquisition of property, rights, and easements; legal description; taxation**

Sec. 31. (a) Whenever the department acquires real property, rights, or easements for the construction, repair, and maintenance of a state highway, a legal description of all rights-of-way and easements, including the area of the land acquired, shall be filed by the department in the office of the recorder in the county in which the real property is located. The description shall be recorded in the deed records of the county. No fee may be charged for filing and recording the description. The department shall also file the



description with the county auditor.

(b) Real property and interests in real property acquired for permanent highway purposes are exempt from taxation from the date of acquisition, provided that all taxes, interest, and penalties recorded on the property tax duplicates have been paid. Where real property or interests in real property are acquired after the assessment date of any year but before December 31, the taxes on the property in the ensuing year are not a lien on the property and shall be removed from the tax duplicates by the county auditor. A property owner who on or after March 1, 1965, conveyed real property or rights in real property to the department and who after July 8, 1965, is assessed taxes upon the property or rights conveyed and who pays the taxes by reason of the failure of the department to properly record the interest in the real property conveyed with the county auditor and recorder for tax purposes may recover the amount of the taxes from the department.

*As added by P.L.18-1990, SEC.216.*

#### **IC 8-23-7-32**

##### **Preservation of abstracts of title, title insurance policies, and other title papers**

Sec. 32. All abstracts of title, policies of title insurance, and other title papers shall be kept and preserved permanently by the department.

*As added by P.L.18-1990, SEC.216.*